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**BEFORE THE  
CALIFORNIA STATE BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues  
Against:  
**ANDRE SHARPE**  
**Spectacle Lens Dispenser Registration**  
**Applicant**  
  
Respondent.

Case Number 420 2022 000169  
OAH Number 2022080309  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about July 22, 2022, Complainant Shara Murphy, in her official capacity as the Executive Officer of the California State Board of Optometry, Department of Consumer Affairs, filed Statement of Issues Number 420 2022 000169 against Andre Sharpe (Respondent) before the California State Board of Optometry. (Statement of Issues attached as Exhibit A.)

2. On or about November 18, 2021, the Board received an application for a Spectacle Lens Dispenser Registration from Andre Sharpe (Respondent). On or about November 18, 2021, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on April 21, 2022. Respondent appealed that denial on or about May 9, 2022.

///

1           3.     On or about July 25, 2022, Respondent was served with Statement of Issues Number  
2 420 2022 000169.

3           4.     On, December 15, 2022, a Notice of Continued Hearing was served by mail at  
4 Respondent's address of record as set forth on his application which was and is: 3165 West  
5 Shields Ave, Apt. 158, Fresno, CA 93722. The Notice of Continued Hearing was also served at  
6 an alternative address that Respondent provided as follows: 3460 North Brawley, # 111, Fresno,  
7 CA 93722. The Notice of Continued Hearing informed Respondent that an administrative  
8 hearing in this matter was scheduled for February 21, 2023.

9           5.     Service of the Statement of Issues was effective as a matter of law under the  
10 provisions of Government Code section 11505(c) and/or Business and Professions Code section  
11 124.

12           6.     The matter was called for hearing at the date, time and location set forth in the Notice  
13 of Hearing. The assigned Administrative Law Judge found that the service of the Notice of  
14 Continued Hearing on Respondent was proper. There was no appearance by or on behalf of  
15 Respondent. A default was declared and on motion of counsel for Complainant, the matter was  
16 remanded to the Board under Government Code section 11520.

17           7.     Government Code section 11506(c) states, in pertinent part:

18                   (c) The respondent shall be entitled to a hearing on the merits if the respondent  
19 files a notice of defense . . . and the notice shall be deemed a specific denial of all  
20 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense  
21 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its  
22 discretion may nevertheless grant a hearing.

23           8.     California Government Code section 11520(a) states, in pertinent part:

24                   (a) If the respondent either fails to file a notice of defense . . . or to appear at  
25 the hearing, the agency may take action based upon the respondent's express  
26 admissions or upon other evidence and affidavits may be used as evidence without  
27 any notice to respondent . . . .

28           9.     Pursuant to its authority under Government Code section 11520, the Board finds  
Respondent is in default. The Board will take action without further hearing and, based on the  
relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,

///

1 finds that the charges and allegations in Statement of Issues Number 420 2022 000169 are,  
2 separately and severally, true and correct by clear and convincing evidence.

3 **DETERMINATION OF ISSUES**

4 1. Based on the foregoing findings of fact, Respondent Andre Sharpe has subjected his  
5 application for a Spectacle Lens Dispenser Registration to denial.

6 2. The agency has jurisdiction to adjudicate this case by default.

7 3. The California State Board of Optometry is authorized to deny Respondent's  
8 application for a Spectacle Lens Dispenser Registration based upon the following violations  
9 alleged in the Statement of Issues, which are supported by the evidence contained in the Default  
10 Decision Investigatory Evidence Packet in this case:

11 a. September 9, 1993 Criminal Conviction for Assault with a Firearm, pursuant to  
12 Business and Professions Code sections 480, subdivision (a)(1)(A), and 2559.2, in that on or  
13 about September 9, 1993, Respondent was convicted by a jury for two counts of Penal Code  
14 section 245, subdivision (a)(2) (assault with a firearm), both serious felonies within the meaning  
15 of Penal Code section 12022.5;

16 b. June 6, 2008 Criminal Conviction for Lewd and Lascivious Acts with a Child  
17 under 14, pursuant to Business and Professions Code sections 480, subdivision (a)(1)(A), and  
18 2559.2, in that on or about June 6, 2008, Respondent was convicted by the court on his plea of no  
19 contest to violating two counts of Penal Code section 288, subdivision (a) (lewd and lascivious  
20 acts with a child under 14), both serious felonies; and,

21 c. False Statement of Material Fact in Connection with Application, pursuant to  
22 Business and Professions Code sections 475, subdivision (a)(1), and 2559.2, in that respondent  
23 knowingly made a false statement of material fact and knowingly omitted to state a material of  
24 fact in his application for a Spectacle Lens Dispenser Registration when he responded “no” to a  
25 question asking whether Respondent had ever been convicted of, or pled nolo contendere to a  
26 crime.

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**ORDER**

IT IS SO ORDERED that Respondent Andre Sharpe’s application for a Spectacle Lens Dispenser Registration is denied.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on May 25, 2023.

It is so ORDERED April 25, 2023



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FOR THE CALIFORNIA STATE BOARD OF  
OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS

37007668.DOCX  
DOJ Matter ID: SA2022302177

Attachment:  
Exhibit A: Statement of Issues

# Exhibit A

Statement of Issues

1 ROB BONTA  
Attorney General of California  
2 KAREN R. DENVER  
Supervising Deputy Attorney General  
3 DANIEL D. MCGEE  
Deputy Attorney General  
4 State Bar No. 218947  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 210-7895  
Facsimile: (916) 324-5567  
7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
**CALIFORNIA STATE BOARD OF OPTOMETRY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues  
Against:

13 **ANDRE SHARPE**

14 **Spectacle Lens Dispenser Registration**  
15 **Applicant**

16 Respondent.

Case Number 420 2022 000169

**STATEMENT OF ISSUES**

17  
18 **PARTIES**

19 1. Shara Murphy (Complainant) brings this Statement of Issues solely in her official  
20 capacity as the Executive Officer of the California State Board of Optometry (Board),  
21 Department of Consumer Affairs.

22 2. On or about November 18, 2021, the Board received an application for a Spectacle  
23 Lens Dispenser Registration from Andre Sharpe (Respondent). On or about November 18, 2021,  
24 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
25 representations in the application. The Board denied the application on April 21, 2022.

26 ///

27 ///

28 ///

1 **JURISDICTION**

2 3. This Statement of Issues is brought before Board under the authority of the following  
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise  
4 indicated.

5 4. Code section 2559.2 states:

6 (a) An individual shall apply for registration as a registered spectacle lens  
7 dispenser on forms prescribed by the board. The board shall register an individual as  
8 a registered spectacle lens dispenser upon satisfactory proof that the individual has  
9 passed the registry examination of the American Board of Opticianry or any  
10 successor agency to that board. In the event the board should determine, after hearing,  
11 that the registry examination is not appropriate to determine entry level competence  
12 as a spectacle lens dispenser or is not designed to measure specific job performance  
13 requirements, the board may thereafter prescribe or administer a written examination  
14 that meets those specifications. If an applicant for renewal has not engaged in the full-  
15 time or substantial part-time practice of fitting and adjusting spectacle lenses within  
16 the last five years then the board may require the applicant to take and pass the  
17 examination referred to in this section as a condition of registration. Any examination  
18 prescribed or administered by the board shall be given at least twice each year on  
19 dates publicly announced at least 90 days before the examination dates. The board is  
20 authorized to contract for administration of an examination.

21 (b) The board may deny registration where there are grounds for denial under  
22 the provisions of Division 1.5 (commencing with Section 475).

23 (c) The board shall issue a certificate to each qualified individual stating that  
24 the individual is a registered spectacle lens dispenser.

25 (d) Any individual who had been approved as a manager of dispensing  
26 operations of a registered dispensing optician under the provisions of Section 2552 as  
27 it existed before January 1, 1988, and who had not been subject to any disciplinary  
28 action under the provisions of Section 2555.2 shall be exempt from the examination  
requirement set forth in this section and shall be issued a certificate as a registered  
spectacle lens dispenser, provided an application for that certificate is filed with the  
board on or before December 31, 1989.

(e) A registered spectacle lens dispenser is authorized to fit and adjust spectacle  
lenses at any place of business holding a certificate of registration under Section 2553  
provided that the certificate of the registered spectacle lens dispenser is displayed in a  
conspicuous place at the place of business where he or she is fitting and adjusting.

24 **STATUTORY PROVISIONS**

25 5. Code section 475 states:

26 (a) Notwithstanding any other provisions of this code, the provisions of  
27 this division shall govern the denial of licenses on the grounds of:

28 (1) Knowingly making a false statement of material fact, or knowingly  
omitting to state a material fact, in an application for a license.

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(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Code section 480 states, in pertinent part:

(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application....

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

...

7. Code section 482 states, in pertinent part:

(a) Each board under this code shall develop criteria to evaluate the rehabilitation of a person when doing either of the following:

(1) Considering the denial of a license by the board under Section 480.

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

(1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

1 (2) The board, applying its criteria for rehabilitation, finds that the applicant is  
2 rehabilitated.

3 ...

4 8. Code section 493 states, in pertinent part:

5 (a) Notwithstanding any other law, in a proceeding conducted by a board within  
6 the department pursuant to law to deny an application for a license or to suspend or  
7 revoke a license or otherwise take disciplinary action against a person who holds a  
8 license, upon the ground that the applicant or the licensee has been convicted of a crime  
9 substantially related to the qualifications, functions, and duties of the licensee in  
10 question, the record of conviction of the crime shall be conclusive evidence of the fact  
11 that the conviction occurred, but only of that fact.

12 (b) (1) Criteria for determining whether a crime is substantially related to the  
13 qualifications, functions, or duties of the business or profession the board regulates  
14 shall include all of the following:

15 (A) The nature and gravity of the offense.

16 (B) The number of years elapsed since the date of the offense.

17 (C) The nature and duties of the profession.

18 (2) A board shall not categorically bar an applicant based solely on the type of  
19 conviction without considering evidence of rehabilitation.

20 (c) As used in this section, "license" includes "certificate," "permit," "authority,"  
21 and "registration." . . . .

22 ...

23 **REGULATORY PROVISIONS**

24 9. California Code of Regulations, title 16, section 1399.270 states:

25 (a) For the purpose of denial, suspension, or revocation of the registration of a  
26 dispensing optician pursuant to Division 1.5 (commencing with Section 475) of the  
27 code, a crime or act shall be considered substantially related to the qualifications,  
28 functions, and duties of a dispensing optician if to a substantial degree it evidences  
present or potential unfitness of a dispensing optician to perform the functions  
authorized by his registration in a manner consistent with the public health, safety, or  
welfare.

(b) In making the substantial relationship required under subdivision (a) for a crime,  
the Board shall consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offence; and

(3) The nature and duties of the registration type sought or held by the person.

(c) For purposes of subdivision (a), substantially related crimes, professional  
misconduct, or acts shall include, but are not limited to, the following:

1 (1) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the  
2 code relating to dispensing opticians.

3 (2) Any violation of the provisions of Chapter 5.4, Division 2 of the code.

4 (3) Any violation of the provisions of Chapter 5.5, Division 2, of the code.

5 (4) Any act involving theft, dishonesty, fraud or deceit.

6 (5) Any act involving assaultive or abusive conduct as defined in Penal Code  
7 section 11160(d).

8 (6) Any act involving sexual misconduct as defined in Business and Professions  
9 Code section 726(a).

10 10. California Code of Regulations, title 16, section 1399.271 states:

11 (a) When considering the denial of a registration under Section 480 of the code  
12 on the ground that the applicant has been convicted of a crime, the Board shall  
13 consider whether the applicant has made a showing of rehabilitation if the applicant  
14 completed the criminal sentence at issue without a violation of parole or probation. In  
15 making the determination the Board shall consider the following criteria:

16 (1) The circumstances, nature, and gravity of the crime(s).

17 (2) The length(s) of the time that has elapsed since the criminal conduct and the  
18 completion of probation.

19 (3) Whether the applicant is a repeat offender of the same or similar crimes (s),  
20 and the total criminal record.

21 (4) The terms or conditions of parole or probation and the extent to which they  
22 bear on the applicant's rehabilitation.

23 (b) If the applicant has not completed the criminal sentence at issue without a violation  
24 of parole or probation, the Board determines that the applicant did not make a showing of  
25 rehabilitation based on the criteria in subdivision (a), the denial is based on professional  
26 misconduct, or when considering a petition for reinstatement under Section 11522 of the  
27 code, the Board shall apply the following criteria in evaluating the applicant's  
28 rehabilitation:

(1) The nature and severity of the act(s), professional misconduct, or crime(s)  
under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s), professional  
misconduct, or crime(s) under consideration as grounds for denial.

(3) The time that has elapsed since commission of the act(s), professional  
misconduct, or crime(s) referred to in subdivision (b)(1) or (b)(2).

(4) The criteria in subdivision (a)(1) through (a)(4), as applicable.

(5) Evidence, if any, of rehabilitation submitted by the applicant.



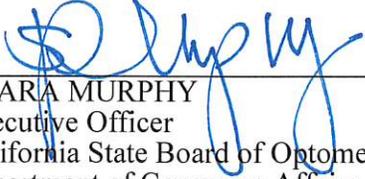
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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California State Board of Optometry issue a decision:

1. Denying the application of Andre Sharpe for a Spectacle Lens Dispenser; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 22 July 22

  
\_\_\_\_\_  
SHARA MURPHY  
Executive Officer  
California State Board of Optometry  
Department of Consumer Affairs  
State of California  
*Complainant*

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